

Commission on Victims in the Courts

Friday, May 17, 2013

10:00 a.m. to 12:00 p.m.

State Courts Building

1501 W. Washington, Phoenix, AZ 85007

Conference Room 119 A/B

Present: Judge Ronald Reinstein; Chair; Michael Breeze; Judge Peter Cahill; Shelly Corzo-Schaffer (*telephonically*); Sydney Davis; Judge Timothy Dickerson; Karen Duffy; Captain Larry Farnsworth (*telephonically*); Judge Elizabeth Finn; Kirstin Flores; John Gillis (*proxy for Keli Luther*); Michael Lessler; Judge Evelyn Marez; Pam Moreton; Karyn Rasile; Barbara Marshall (*proxy: Elizabeth Ortiz*); Judge Sally Simmons (*telephonically*); Dimple Ann Smith; Judge Richard Weiss; Judge Joseph Kreamer (*proxy for Judge Joseph Welty*), Chief Cindy Winn (*telephonically*).

Absent/Excused: Daniel Levey; Leslie James; Sgt. Ret. Jim Markey; Doug Pilcher;

Presenters/Guests: Aaron Nash, COVIC Victim Identification Workgroup; Judge Antonio Riojas, Arizona Case Processing Standards Steering Committee; Cindy Cook, AOC, Arizona Case Processing Standards Steering Committee; John Gillis, Victims Services, Maricopa County Attorney's Office; Barbara Marshall, Victims Services, Maricopa County Attorney's Office; Judge Joseph Kreamer, Maricopa County Superior Court.

Staff: Carol Mitchell, AOC; Kelly Gray, AOC; Jerri Media, AOC.

I. Regular Business

A. Welcome and Opening Remarks

The May 17, 2013 meeting of the Commission on Victims in the Courts was called to order by Chair, Honorable Ronald Reinstein, at 10:01 a.m.

The Chair asked for Commission member roll call and introductions of staff and guests.

The Chair recognized all outgoing Committee members. The Chair acknowledged the contributions of the outgoing members including Judge Antonio Riojas, Judge William O'Neil, Dr. Kathryn Coffman, and Judge Anna Montoya-Paez.

The Chair welcomed the new Committee members and gave background information on each new member:

- Judge Sally Simmons, Presiding Judge, Arizona Superior Court in Pima County
- Judge Joseph Welty, Presiding Criminal Judge, Arizona Superior Court in Maricopa County
- Judge Timothy Dickerson, Sierra Vista Justice of the Peace and City of Sierra Vista Magistrate.
- Michael Lessler, Chief Deputy County Attorney, Coconino County
- Karyn Rasile, Supervisor, Scottsdale Healthcare Forensic Nurse Examiners
- Dimple Ann Smith, Lead Advocate, Pima County Attorney's Office, Victim Services Division
- Daniel Levey, Executive Director, National Organization of Parents of Murdered Children.

The Chair acknowledged all the reappointments to the committee including Judge Peter Cahill, Pam Moreton, Judge Elizabeth Finn, and Leslie James.

The Chair introduced the guests including Barbara Marshall (proxy for Elizabeth Ortiz), Aaron Nash, John Gillis (proxy for Keli Luther), Judge Joseph Kreamer (proxy for Judge Joseph Welty), and Cindy Cook.

B. Approval of January 25, 2013 Minutes

The draft minutes from the January 25, 2013 meeting of the Commission on Victims in the Courts were presented for approval. The Chair called for any omissions or corrections to the minutes from January 25, 2013 meeting.

- Motion was called by Judge Richard Weiss for the approval of minutes presented; Sydney Davis seconded; motion passed unanimously.

The Chair reminded members the next COVIC meeting is on Friday, October 25, 2013.

II. Old Business

A. Victim ID Protection Rule Implementation Update:

Aaron Nash, Chair of the Implementation Workgroup, presented an update on the process of executing some of the new/changed court rules (approved rule petition R-12-2004) that will take effect on September 1, 2013.

Since the last COVIC meeting, this workgroup met on March 20, 2013 and May 7, 2013. Mr. Nash believes that implementation of the rule changes is on track to meet the September 1, 2013 target. The technology seems to be in place for Pima, Maricopa, and AJACS users to implement on time.

The workgroup first focused on how this rule applies to victims in juvenile cases and victims of sex crimes, then dealt with how prosecutors and clerks should handle these cases, and finally made recommendations about how to implement these changes. Information online will be restricted in any case where the victim is a juvenile or in which a defendant is charged with any offense listed in A.R.S. §§ 13-1401, -3201, -3501, and -3551. Prosecutors and clerks will have to communicate that the case falls within the parameters when entering case data into case management systems. Accurate coding of these cases by clerks will prevent the information from appearing online. Though the rule does not define a victim identifier, the workgroup recommends numbering of victims in court documents. For example: Victim 1, Victim 2, etc.

Carol Mitchell emphasized that cases need to be identified at the beginning. Prosecutors and clerks should code these cases properly when charging defendants. Judge Reinstein would like to speak to the Arizona Prosecuting Attorneys' Advisory Council (APAAC), and possibly to the State Bar of Arizona, to help reinforce the importance of prosecutors notifying clerks when charging, and clerks properly coding and indentifying these cases in case management systems.

The Administrative Office of the Courts (AOC) intends to draft a letter from the Court Services Division Director to judges, Clerks of Court, and court administrators. The draft "Use of Victim Names in Court Records and Online" document submitted in this meeting is a communication piece to courts that will likely be merged into other documentation to be developed by the AOC for advertising and implementing the rule change. The biggest impact will be on prosecutors and clerks' offices.

There was discussion about implementation of the rule on new cases vs. older/appeals cases, the affect of the rule inside the courtroom, and courts effected by this change. Discussion points included:

- The September 1, 2013 implementation date applies to new cases only.
- There have already been over 300 old appellate cases where victims' names have been removed.
- Loss of identity of the victim can create problems in the courtroom where the judge has to make decisions based on a "person" not an "it".
- The intention of the rule was not use pseudonym in the courtroom; it was intended for online access/records purposes, not to depersonalize the victim in the courtroom. The victim can "Opt Out" of this rule provision.
- When prosecutors are developing pseudonym procedures, it was recommended that they seek input from the Defense Bar. This may help reduce duplications of charging documents.
- The rule change appears to primarily impact general jurisdiction courts.

B. Strategic Agenda Recommendations:

The Supreme Court creates a five (5) year Strategic Agenda. All committees under the Supreme Court were asked to give input on the issues that affect their committee. COVIC created a workgroup to help in this process. COVIC authorized the workgroup to make recommendations on behalf of the Commission in order to meet the submission deadline. Based on what this Commission has discussed before as priorities, the workgroup came up with several ideas:

- Strengthening the Administration of Justice
 - Using technology efficiently: Encourage the coordination of technology solutions to ensure victim safety by making terms and conditions of release readily accessible to law enforcement.
 - Improving Public Access, Transparency, and Accountability:
 - Create uniform procedures for processing and collecting on restitution judgments and
 - Extend language access services to victims and victim families in court proceedings.
 - Concerns were raised about the general nature of the restitution goal. It was suggested that there be more specific language regarding the process of restitution collection and follow-up activities, i.e. including a reporting requirement to the Chief Justice, be incorporated in the goal. This point was acknowledged and it was suggested that all the goals presented were made intentionally broad in order to achieve progress in every county. If there is suggested language on any of the goals, please forward your proposed verbiage to Carol Mitchell.
 - There was discussion about making language access a targeted Strategic Agenda item as there are still issues with how non-English speaking members of a victim's family are handled in the court.
- Improving Communications
 - Communication with Other Branches of Government and Justice System Partners: Improve intra-court communications between judicial officers on family, juvenile and/or the criminal bench for cases involving child victims to reduce conflicting contact orders.
- Protecting Children, Families, and Communities
 - Protecting Vulnerable Children and Families: Evaluate the resource entitled, "Multidisciplinary Protocol for the Investigation of Child Abuse" to suggest revisions to court-related victim impacts within the judicial, juvenile court, juvenile and adult probation, mental health and victim services chapters.
 - Protecting Communities: Revise criminal benchbook for judicial officers to include information on impact of trauma on children, child accommodations for court proceedings and best practices

that help reduce delay in processing violent crimes involving children.

These ideas will be submitted to the AOC. The AOC will review them and submit them to the Supreme Court for consideration and possible inclusion in the Strategic Agenda. This process should be complete by June 2013. It is possible that none of the goals outlined will be incorporated into the Strategic Agenda. Regardless of the outcome this Committee may decide to address these tasks.

C. Arizona Case Processing Standards Steering Committee:

Judge Antonio Riojas and Ms. Cindy Cook presented the proposed case processing standards from the Arizona Case Processing Standards Steering Committee. The committee has completed a review of the national model, the Arizona rules and statutes and the comments received, and have developed final recommendations for case processing standards for all case types except probate case types. The comment deadline for probate types is May 31, 2013. The Comment Forum can be found at:

<http://www.azcourts.gov/caseprocessingstandards/login.aspx?ReturnUrl=%2fcaseprocessingstandards%2fhome.aspx>.

The final recommendations have been or will be presented to most of the standing committees for recommendation to the Arizona Judicial Council on October 24, 2013.

The administrative order signed by the Chief Justice will include language that the standards are provisionally adopted pending development of reports, validation and clean-up of data, and training. These reports will be for court use only so they can manage their cases and will not be released publicly until the data is validated and we have re-visited the standards in light of this data. Pursuant to Rule 123(e)(6) preliminary reports for the courts use are not available to the public

Three (3) case types were presented in this meeting including criminal felony, criminal misdemeanor, and criminal misdemeanor DUI.

- Criminal Felony
 - There were no changes since the last time this issue was presented to the Commission.
 - 65% within 90 days
 - 85% within 180 days
 - 96% within 365 days
 - Death Penalty cases will be included as part of the 4% disposed after 365 days
- ***Motion was called by Judge Richard Weiss to approve the criminal felony case standards as presented with the proviso that reports will be***

developed, the data will be validated and cleaned-up, and training will be provided. Michael Breeze seconded; motion passed unanimously.

- Criminal Misdemeanor
 - Since the last time this issue was addressed, there was a statement added that petty offenses will be included; there were no other changes made.
 - The Committee stayed with the national model standard but added the following comment: “These standards are based on the assumption that most of these cases are resolved without an attorney. These standards should be revisited if penalties on misdemeanor cases continue to become more stringent and attorney involvement increases.”
 - The Arizona Case Processing Standards Steering Committee recommends that Arizona comport with the national model:
 - 75% within 60 days
 - 90% within 90 days
 - 98% within 180 days
 - Criminal traffic cases are included.
 - Petty offenses are included.
 - Criminal local ordinance cases are included.
 - DUI cases are excluded.

To come up with the standard, the Committee began with the national standards, compared data from eight (8) different Arizona courts (that included justice and city courts; rural and urban) and solicited input from the local courts. Local courts agreed with the standard. Criminal felony and misdemeanor DUI have different standards, and the time in which the defendant is in a diversion program is excluded.

- ***Motion was called by Judge Ronald Reinstein to approve the criminal misdemeanor case standards as presented with the proviso that reports will be developed, the data will be validated and cleaned-up, and training will be provided. Judge Richard Weiss seconded; motion passed unanimously.***

- Criminal Misdemeanor DUI
 - There were no changes since the last time this issue was presented to the Commission.
 - This is an existing standard and the standard has been piloted in Arizona and the Arizona Case Processing Standards Steering Committee is recommending that this standard be adopted at the same time as the other standards are adopted.
 - 85% within 120 days
 - 93% within 180 days
 - Criminal misdemeanor cases are excluded.
 - Criminal traffic cases are excluded.

- Criminal local ordinance cases are excluded
- ***Motion was called by Judge Ronald Reinstein to approve the criminal misdemeanor DUI case standards as presented with the proviso that reports will be developed, the data will be validated and cleaned-up, and training will be provided. Michael Breeze seconded; motion passed unanimously.***

D. Amended Rule Petition from Wireless Committee:

In September of 2012, Mark Meltzer gave a presentation to COVIC regarding wireless devices in the courtroom. During that meeting, COVIC had given input in the rules petition process with the goal of having an automatic victim “opt-out” statement; victims should not have to specifically request that the proceeding not be recorded. Under the new language proposed in Ariz. R. Sup. Ct. 122(c)(5), a victim’s attorney, a prosecutor’s victim advocate, as well as anyone who calls a witness to testify, has a responsibility to notify that victim or witness of coverage, and his/her right to object, prior to the victim’s appearance or the witness’ testimony at the proceeding. Judge Richard Weiss pointed out that the way this rule may be set up, the victim may never know there is a request to cover a proceeding. In turn, the victim may be harmed more as he/she may not have the opportunity to timely file their objection to the coverage.

Further, a new proposed rule was developed, Ariz. R. Sup. Ct. 122.1, which addresses the use of portable electronic devices in a courthouse. There was discussion regarding the use of the word “terminate” vs. “prohibit” in Ariz. R. Sup. Ct. 122.1(e). Judge Elizabeth Finn argued that the word “terminate” in the sentence implies that the judge would only take action *after* the disturbance has occurred; whereas use of the word “prohibit” would allow the judge to take action *before* the disturbance even occurs. Judge Finn and others intend to file a comment on this issue

A counterpoint to this argument was presented by Ms. Barbara Marshall (proxy for Elizabeth Ortiz). Outright prohibition of use of portable electronic devices in the court may cause difficulty in the courtroom as many attorneys are transitioning to a paperless system in which a mobile device is necessary to retrieve data about the case. If an attorney is prohibited from using his/her device in the courtroom, there may be issues with answering the judge’s question regarding the case, scheduling proceeding, etc.

Discussions centered around the judge controlling the courtroom. During the formulation of this proposed rule, the “terminate” vs. “prohibit” argument was made. The Committee decided specifically to keep the word “terminate”. Judge Antonio Riojas argued that commonsense usually prevails regarding use of a mobile device in the courtroom, and a judge should have the ability to use his/her own discretion in the courtroom. Judge Ronald Reinstein recommended to Ms. Barbara Marshall that APAAC submit a comment regarding this issue in the comment forum.

Another issue was brought up by Judge Ronald Reinstein regarding the use of mobile devices in the jury selection process. During the voir dire process an attorney can look up information on the Internet to find out more about potential jurors, influencing the process of selecting a jury. As technology improves, issues regarding the use of a mobile device in the courtroom will continue to occur.

Members of the committee may file separate comments to these proposed rules, as individuals, or on behalf of their organization/employer. This Committee will not be filing a comment as a group.

An Amended Rule Petition has been filed for both of these proposed rules and the comment period closes on June 5, 2013. The comments forum can be found at:

<http://azdnn.dnnmax.com/AZSupremeCourtMain/AZCourtRulesMain/CourtRulesForumMain/CourtRulesForum/tabid/91/view/topics/forumid/7/Default.aspx>

III. New Business

A. Juvenile Detention/Advisory Hearings within 24 hours:

Ms. Pam Moreton shared her concerns of a potential conflict between rules of juvenile court and the victim's right statutes dealing with juvenile cases. Specifically, there seems to be a conflict in the area of detention and advisory hearings regarding victim notification.

Ms. Pam Moreton identified four (4) potential conflicts:

- Ariz. Juv. Ct. R. 23, which addresses detention of the juvenile, does not indicate an advisory hearing be held within 24 hours, only that "a hearing" take place. The detention hearing complies with this requirement if performed within 24 hours. An advisory hearing is not mentioned.
- Ariz. Juv. Ct. R. 28, which addresses the advisory hearing, seems to conflict with itself. In Ariz. Juv. Ct. R. 28(A) the purpose outlined does not mention victim participation; however in Ariz. Juv. Ct. R. 28(C)(6)(a-b) the rule directs the court to comply with Victims' Rights.
- A.R.S § 8-389, which addresses preliminary notice of rights given to the victim, says "at the time of the charging or seven days after the prosecutor charges a delinquent offense if the accused is not in custody, the prosecutor's office shall give the victim notice of the following..." This statement is unclear as to the meaning. Does this mean that the prosecutor must notify the victim immediately if the juvenile is in custody?
- A.R.S § 8-390, which addresses how the prosecutor's office and victim are notified of scheduled proceedings, A.R.S § 8-390(B) only provides for the detention hearing to be exempt from five (5) days notice from the courts to the prosecutor's office. The prosecutor is required to notify

victims of scheduled proceeding in a timely manner, which can be up to five (5) days in advance.

Yavapai County is now setting 'detention/advisory hearings' that require prosecution and the defense be present. The judges reset the advisory hearing to comply with the five (5) day notification requirement in A.R.S § 8-390. If a detention hearing (without the advisory portion) is scheduled on the weekend, prosecutors and defense attorneys are not available. The advisory hearing is scheduled for the following Monday at 9:00am and the prosecutors do not have time to comply with the victim notification statutes.

Victim notification of proceedings in juvenile cases seems to be an issue in most counties. Each county handles this issue differently, however the issues are similar. Judge Peter Cahill, who is the Chair of the Commission on Juvenile Courts (COJC), suggests that Pam Moreton, Chad Campbell (AOC Juvenile Services), and Carol Mitchell meet to discuss this matter and present it to the COJC.

B. Sentencing Rules/Statutes in Misdemeanor Cases:

Ms. Kirstin Flores, Director of the Arizona Attorney General's Office of Victim Services discussed the services provided by her office.

In addition to victims' rights advocacy, the office has a support component that provides assistance and funding to 58 different criminal justice programs around the state. As part of the funding, the Victim Services Office conducts audits to ensure that the funds are being spent correctly and that they are in compliance with all victims rights laws.

Ms. Flores reviewed an audit finding of a county attorney's office where the court in that jurisdiction had a practice of sentencing misdemeanor cases during the initial appearance when the defendant has plead guilty. In these instances, the prosecutor was not present, so the County Attorney's office was never aware of the case to provide victims' rights. The audit found that this practice was in violation of some victims' rights laws. This prompted an informal statewide survey, and it was found that 8 of the 15 offices had similar procedures.

The first thought of the OVS was that there be a rule amendment to Ariz. R. Crim. P. 26.3, however this idea was abandoned after receiving some input from other COVIC member. Instead the OVS is looking to make procedural changes and training initiatives with various AOC committees/commissions and stakeholders. The Arizona Attorney General's Office is considering altering law enforcement forms to notify victims that sentencing could occur at that initial appearance. The office is also considering conducting training in affected counties and facilitate discussion with the Justice of the Peace offices.

It was discussed that Initial Appearance procedures vary greatly throughout the state in limited jurisdiction courts after input from Judge Elizabeth Finn, Judge Timothy Dickerson, Judge Antonio Riojas, and Judge Ronald Reinstein.

Judge Ronald Reinstein suggested that this matter be discussed with Paul Julien at Judicial Education Services, who is involved with judicial training and sending out information regarding limited jurisdiction courts. He also suggested that he, Ms. Flores, and Carol Mitchell attend the next LJC meeting on August 21, 2013 to present this issue.

IV. Call to Public

A. Good of the Order/Call to the Public

Judge Ronald Reinstein commented that any commission member can bring up any issue at any time. This Commission provides an avenue for victims/victims representative to speak to stakeholders. If any commission members know of someone that would like to speak to the committee, please invite that person to do so.

V. Adjourn

A. Motion to adjourn at 11:49 a.m. by Michael Breeze. Motion was seconded by Judge Timothy Dickerson; motion passed.

B. Next Committee Meeting Date:

Friday, October 25, 2013

10:00 a.m. to 12:00 p.m.

State Courts Building, Room 119 A/B

1501 W. Washington St., Phoenix, AZ 85007